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CHICAGO, IL 60661

EXAMINER

GOETZE, SIMON A

ART UNIT	PAPER NUMBER
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2617

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/658,450

Applicant(s)

MARTIN ET AL.

Examiner

Simon A. Goetze

Art Unit

2617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This Action is responsive to Applicant's Pre-Brief Conference Request filed October 16, 2007 and the decision to Reopen prosecution mailed by the Office on December 3, 2007.

Claims 1-25 are still pending. This Action is made Non-Final.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

1. **Claims 1-25** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Gai et al. (US Patent 6,032,194)** in view of **Eglin (US Patent Application Publication 2004/0047320)** and **Juitt et al. (US Patent Application Publication 2006/0234678)**.

Consider **claims 1, 9, and 17**, Gai et al. discloses a method, machine readable storing having stored thereon a computer program having at least one code section for performing the method, and a system for access point aggregation and resiliency in a local area network (*Abstract; Column 5, Lines 16-19 and 35-53*), the method comprising:

determining at least one available switch port having a capability to handle a first local area network (*read as a local area network is connected to a switch port which can determine if the port is active and able to serve; if not a backup can be used – Column 7, Lines 20-30; Column 10, Lines 49-67; Column 11, Lines 1-15*), said first local area network having a first default switch port (*Column 11, Lines 8-15 and 41-44*);

provisioning said at least one available switch port to provide service to said first local area network (*read as a backup port is setup and the LAN is transferred to it in order to provide continuous communications – Column 10, Lines 1-12; Column 11, Lines 8-24 and 41-51; Column 12, Lines 19-27*); and

communicating information using at least one of said first default switch port and said at least one provisioned switch port (*Column 11, Lines 8-24 and 41-51; Column 12, Lines 19-27 and 32-42*).

However, Gai et al. discloses this network resiliency with port reconfiguration employed over a wired local area network, containing a number of hosts or end stations which are not described, connected to a switch, while failing to specifically disclose a hybrid wired/wireless local area network.

In related prior art, Eglin discloses a network which employs reconfiguration to groups of access points connected to a switch to implement connection resiliency. The network is arranged as a hybrid wired/wireless local area network by providing the wireless access points 106, 108, 110, etc. shown in Figure 1 (*Page 2, Paragraphs 0036 and 0029; Page 3, Paragraphs 0030 and 0036*).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to incorporate the teachings of Eglin with those of Gai et al. in order to employ connection protection in a wireless network which allows users to roam freely while maintaining a connection.

However, while Gai et al. as modified by Eglin discloses that a WLAN connected to a failing port can be transferred to a backup port in order to provide resiliency to the network, they fail to specifically disclose that the hosts, having the capability to source and sink data, which are part of the WLAN are actually a group of access points.

In related prior art, Juitt et al. discloses a method for managing data traffic in wireless networks wherein a WLAN comprising a group of access points is connected to a port which can be transferred if a fault occurs (*Figures 1A and 7 – Abstract; Page 3, Paragraph 0023; Page 9, Paragraph 0081; Page 12, Claim 44*).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to incorporate the teachings of Juitt et al. with those of Gai et al. as modified by Eglin in order to show that a WLAN can contain multiple access points and that it is desirable to provide continuous communications to the entire network in the event of a port, to which the WLAN is connected, failing.

Consider **claims 2, 10, and 18**, as applied above, Gai et al. as modified by Eglin and Juitt et al. further discloses that the determining further comprises selecting said at least one available switch port from a reserved pool of available switch ports (*Figure 3D – Column 11, Lines 41-52; Column 12, Lines 13-27 and 37-42 and 46-55*).

Consider **claims 3, 11, and 19**, as applied above, Gai et al. as modified by Eglin and Juitt et al. further discloses returning said selected at least one available switch port to said reserved pool of available switch ports upon abatement of a need to utilize said provisioned at least one available switch port (*Figure 3E – Column 14, Lines 37-48*).

Consider **claims 4, 12, and 20**, as applied above, Gai et al. as modified by Eglin and Juitt et al. further discloses selecting said at least one available switch port from at least one of a first switching element and a second switching element, said first default switch port being associated with said first switching element (*the different ports of the access switch are connected to different backbone switches, additionally some local area networks can communicate directly with more than one switch – Column 10, Lines 49-67; Column 11, Lines 1-7 and 8-24 and 41-51; Column 12, Lines 19-27*).

Consider **claims 5, 13, and 21**, as applied above, Gai et al. as modified by Eglin and Juitt et al. further discloses determining at least one a second available switch port having a capability

to handle a second access point group, said second access point group having a second default switch port *(the same procedure is followed for each local area network connected to the switch for determining a transmission port - Column 7, Lines 20-30; Column 10, Lines 49-67; Column 11, Lines 1-15)*.

Consider **claims 6, 14, and 22**, as applied above, Gai et al. as modified by Eglin and Juitt et al. further discloses provisioning at least a third available switch port to provide service to said second access point group *(Column 10, Lines 1-12; Column 11, Lines 8-24 and 41-51; Column 12, Lines 19-27)*.

Consider **claims 7, 15, and 23**, as applied above, Gai et al. as modified by Eglin and Juitt et al. further discloses switching between any two of said at least one available switch port, said at least a second available switch port and said at least a third available switch port *(Column 11, Lines 8-24 and 41-51; Column 12, Lines 19-27 and 32-42)*.

Consider **claims 8, 16, and 24**, as applied above, Gai et al. as modified by Eglin and Juitt et al. further discloses switching between said default switch port and said at least one available switch port in a time period less than on the order of a few milliseconds from at least one of a detectable link failure and a configuration change *(change occurs at or about the same instant, and the connection is tested every few milliseconds - Column 12, Lines 4-12; Column 14, Lines 40-51)*.

Consider **claim 25**, as applied to claim 17 above, Gai et al. as modified by Elgin further discloses that said at least one processor is at least one of a switch processor, a bandwidth management controller, a quality of service controller, a load balancing controller, a session

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controller, and a network management controller (*Column 10, Lines 1-12; Column 11, Lines 8-24 and 41-51; Column 12, Lines 19-27*).

Response to Arguments

Applicant's arguments with respect to claims 1-25 filed After Final have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

1. Any response to this Office Action should be **faxed to (571) 273-8300 or mailed to:**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Hand-delivered responses should be brought to

Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

2. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Simon A. Goetze whose telephone number is (571) 270-1113. The Examiner can normally be reached on Monday-Thursday from 7:30am to 5:00pm and Friday from 7:30am to 4:00pm.

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If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Nick Corsaro can be reached on (571) 272-7876. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free) or 703-305-3028.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist/customer service whose telephone number is (571) 272-2600.



Simon A. Goetze
S.A.G./sag

February 2, 2008



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2/4/08